

Senate Engrossed House Bill

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

**CHAPTER 209**

# **HOUSE BILL 2488**

AN ACT

AMENDING SECTIONS 25-503 AND 25-809, ARIZONA REVISED STATUTES; RELATING TO  
CHILD SUPPORT ENFORCEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 25-503, Arizona Revised Statutes, is amended to  
3 read:

4 25-503. Order for support; methods of payment; modification;  
5 termination; statute of limitations; judgment on  
6 arrearages; notice; security

7 A. In any proceeding in which there is at issue the support of a  
8 child, the court may order either or both parents to pay any amount necessary  
9 for the support of the child. If a personal check for support payments and  
10 handling fees is rightfully dishonored by the payor bank or other drawee, any  
11 subsequent support payments and handling fees shall be paid only by cash,  
12 money order, cashier's check, traveler's check or certified check. The  
13 department may collect from the drawer of a dishonored check or draft an  
14 amount allowed pursuant to section 44-6852. Pursuant to sections 35-146 and  
15 35-147, the department shall deposit monies collected pursuant to this  
16 subsection in a child support enforcement administration fund. If a party  
17 required to pay support other than by personal check demonstrates full and  
18 timely payment for twenty-four consecutive months, that party may pay support  
19 by personal check if these payments are for the full amount, are timely  
20 tendered and are not rightfully dishonored by the payor bank or other drawee.  
21 On a showing of good cause, the court may order that the party or parties  
22 required to pay support give reasonable security for these payments. If the  
23 court sets an appearance bond and the obligor fails to appear, the bond is  
24 forfeited and credited against any support owed by the party required to pay  
25 support. This subsection does not apply to payments that are made by means  
26 of a wage assignment.

27 B. On a showing that an income withholding order has been ineffective  
28 to secure the timely payment of support and that an amount equal to six  
29 months of current support has accrued, the court shall require the obligor to  
30 give security, post bond or give some other guarantee to secure overdue  
31 support.

32 C. In title IV-D cases, and in all other cases subject to an income  
33 withholding order issued on or after January 1, 1994, after notice to the  
34 party entitled to receive support, the department or its agent may direct the  
35 party obligated to pay support or other payor to make payment to the support  
36 payment clearinghouse. The department or its agent shall provide notice by  
37 first class mail.

38 D. The obligation for current child support shall be fully met before  
39 any payments under an order of assignment may be applied to the payment of  
40 arrearages. If a party is obligated to pay support for more than one family  
41 and the amount available is not sufficient to meet the total combined current  
42 support obligation, any monies shall be allocated to each family as follows:  
43 1. The amount of current support ordered in each case shall be added  
44 to obtain the total support obligation.

1           2. The ordered amount in each case shall be divided by the total  
2 support obligation to obtain a percentage of the total amount due.

3           3. The amount available from the obligor's income shall be multiplied  
4 by the percentage under paragraph 2 of this subsection to obtain the amount  
5 to be allocated to each family.

6           E. Any order for child support may be modified or terminated on a  
7 showing of changed circumstance that is substantial and continuing, except as  
8 to any amount that may have accrued as an arrearage before the date of notice  
9 of the motion or order to show cause to modify or terminate. The addition of  
10 health insurance coverage as defined in section 25-531 or a change in the  
11 availability of health insurance coverage may constitute a continuing and  
12 substantial change in circumstance. Modification and termination are  
13 effective on the first day of the month following notice of the petition for  
14 modification or termination unless the court, for good cause shown, orders  
15 the change to become effective at a different date but not earlier than the  
16 date of filing the petition for modification or termination. The order of  
17 modification or termination may include an award of attorney fees and court  
18 costs to the prevailing party.

19           F. ON PETITION OF A PERSON WHO HAS BEEN ORDERED TO PAY CHILD SUPPORT  
20 PURSUANT TO A PRESUMPTION OF PATERNITY ESTABLISHED PURSUANT TO SECTION  
21 25-814, THE COURT MAY ORDER THE PETITIONER'S SUPPORT TO TERMINATE IF THE  
22 COURT FINDS BASED ON CLEAR AND CONVINCING EVIDENCE THAT PATERNITY WAS  
23 ESTABLISHED BY FRAUD, DURESS OR MATERIAL MISTAKE OF FACT. EXCEPT FOR GOOD  
24 CAUSE SHOWN, THE PETITIONER'S SUPPORT OBLIGATIONS CONTINUE IN EFFECT UNTIL  
25 THE COURT HAS RULED IN FAVOR OF THE PETITIONER. THE COURT SHALL ORDER THE  
26 PETITIONER, EACH CHILD WHO IS THE SUBJECT OF THE PETITION AND THE CHILD'S  
27 MOTHER TO SUBMIT TO GENETIC TESTING AND SHALL ORDER THE APPROPRIATE TESTING  
28 PROCEDURES TO DETERMINE THE CHILD'S INHERITED CHARACTERISTICS, INCLUDING  
29 BLOOD AND TISSUE TYPE. IF THE COURT FINDS THAT THE PETITIONER IS NOT THE  
30 CHILD'S BIOLOGICAL FATHER, THE COURT SHALL VACATE THE DETERMINATION OF  
31 PATERNITY AND TERMINATE THE SUPPORT OBLIGATION. UNLESS OTHERWISE ORDERED BY  
32 THE COURT, AN ORDER VACATING A SUPPORT OBLIGATION IS PROSPECTIVE AND DOES NOT  
33 ALTER THE PETITIONER'S OBLIGATION TO PAY CHILD SUPPORT ARREARAGES OR ANY  
34 OTHER AMOUNT PREVIOUSLY ORDERED BY THE COURT. IF THE COURT FINDS THAT IT IS  
35 IN THE CHILD'S BEST INTERESTS, THE COURT MAY ORDER THE BIOLOGICAL FATHER TO  
36 PAY RESTITUTION TO THE PETITIONER FOR ANY CHILD SUPPORT PAID BEFORE THE COURT  
37 RULED IN FAVOR OF THE PETITIONER PURSUANT TO THIS SUBSECTION.

38           ~~F.~~ G. Notwithstanding subsection E of this section, in a title IV-D  
39 case a party, or the department or its agent if there is an assignment of  
40 rights under section 46-407, may request every three years that an order for  
41 child support be reviewed and, if appropriate, adjusted. The request may be  
42 made without a specific showing of a changed circumstance that is substantial  
43 and continuing. The department or its agent shall conduct the review in  
44 accordance with the child support guidelines of this state. If appropriate,  
45 the department shall file a petition in the superior court to adjust the

1 support amount. Every three years the department or its agent shall notify  
2 the parties of their right to request a review of the order for support. The  
3 department or its agent shall notify the parties by first class mail at their  
4 last known address or by including the notice in an order.

5 G. H. If a party in a title IV-D case requests a review and  
6 adjustment sooner than three years, the party shall demonstrate a changed  
7 circumstance that is substantial and continuing.

8 H. I. The right of a party entitled to receive support or the  
9 department to receive child support payments as provided in the court order  
10 vests as each installment falls due. Each vested child support installment  
11 is enforceable as a final judgment by operation of law. ~~Unless it is reduced~~  
12 ~~to a written money judgment, an unpaid child support judgment that became a~~  
13 ~~judgment by operation of law expires three years after the emancipation of~~  
14 ~~the last remaining unemancipated child who was included in the court order.~~  
15 ~~Beginning on January 1, 2000, child support orders, including modified~~  
16 ~~orders, must notify the parties of this expiration date. The filing of a~~  
17 ~~request for a written money judgment before the end of that period preserves~~  
18 ~~the right to judgment until the court grants a judgment or the court denies~~  
19 ~~the request. A request does not need to be filed within three years if:~~

20 1. ~~The court later determines that the actions or conduct of an~~  
21 ~~obligor impeded the establishment of a written money judgment, including~~  
22 ~~avoiding service or notice of that action, changing a name or social security~~  
23 ~~number or leaving the state where the last support order was entered without~~  
24 ~~notifying the party to whom support is ordered to be paid or the court or the~~  
25 ~~department of that party's residential and mailing addresses.~~

26 2. ~~The court later finds that the obligor threatened, defrauded or~~  
27 ~~wrongfully coerced the obligee into not filing a request to reduce any~~  
28 ~~support arrearages to a written money judgment.~~

29 I. ~~The department or its agent or a party entitled to receive support~~  
30 ~~may file a request for judgment for support arrearages not later than three~~  
31 ~~years after the emancipation of all of the children who were the subject of~~  
32 ~~the court order. In such a proceeding there is no bar to establishing a~~  
33 ~~money judgment for all of the unpaid child support arrearages for all of the~~  
34 ~~children who were the subject of the court order. Notwithstanding any other~~  
35 ~~law, formal written judgments for support and for associated costs and~~  
36 ~~attorney fees are exempt from renewal and are enforceable until paid in full.~~  
37 ~~If emancipation is disputed, this subsection shall be liberally construed to~~  
38 ~~effect its intention of diminishing the limitation on the collection of child~~  
39 ~~support arrearages. THE DEPARTMENT OR ITS AGENT OR A PARTY ENTITLED TO~~  
40 ~~RECEIVE SUPPORT MAY ALSO FILE A REQUEST FOR WRITTEN JUDGMENT FOR SUPPORT~~  
41 ~~ARREARAGES.~~

42 J. IF THE OBLIGEE, THE DEPARTMENT OR THEIR AGENTS MAKE EFFORTS TO  
43 COLLECT A CHILD SUPPORT DEBT MORE THAN TEN YEARS AFTER THE EMANCIPATION OF  
44 THE YOUNGEST CHILD SUBJECT TO THE ORDER, THE OBLIGOR MAY ASSERT AS A DEFENSE,  
45 AND HAS THE BURDEN TO PROVE, THAT THE OBLIGEE OR THE DEPARTMENT UNREASONABLY

1 DELAYED IN ATTEMPTING TO COLLECT THE CHILD SUPPORT DEBT. ON A FINDING OF  
2 UNREASONABLE DELAY, A TRIBUNAL AS DEFINED IN SECTION 25-1202, MAY DETERMINE  
3 THAT SOME OR ALL OF THE CHILD SUPPORT DEBT IS NO LONGER COLLECTIBLE AFTER THE  
4 DATE OF THE FINDING.

5 K. NOTWITHSTANDING ANY OTHER LAW, ANY JUDGMENT FOR SUPPORT AND FOR  
6 ASSOCIATED COSTS AND ATTORNEY FEES IS EXEMPT FROM RENEWAL AND IS ENFORCEABLE  
7 UNTIL PAID IN FULL.

8 ~~J.~~ L. If a party entitled to receive child support or spousal  
9 maintenance or the department or its agent enforcing an order of support has  
10 not received court ordered payments, the party entitled to receive support or  
11 spousal maintenance or the department or its agent may file with the clerk of  
12 the superior court a request for judgment of arrearages and an affidavit  
13 indicating the name of the party obligated to pay support and the amount of  
14 the arrearages. The request must include notice of the requirements of this  
15 section and the right to request a hearing within twenty days after service  
16 in this state or within thirty days after service outside this state. The  
17 request, affidavit and notice must be served pursuant to the Arizona rules of  
18 civil procedure on all parties including the department or its agents in  
19 title IV-D cases. In a title IV-D case, the department or its agent may  
20 serve all parties by certified mail, return receipt requested. Within twenty  
21 days after service in this state or within thirty days after service outside  
22 this state, a party may file a request for a hearing if the arrearage amount  
23 or the identity of the person is in dispute. If a hearing is not requested  
24 within the time provided, or if the court finds that the objection is  
25 unfounded, the court must review the affidavit and grant an appropriate  
26 judgment against the party obligated to pay support.

27 ~~K.~~ M. If after reasonable efforts to locate the obligee the clerk or  
28 support payment clearinghouse is unable to deliver payments for a period of  
29 one hundred twenty days after the date the first payment is returned as  
30 undeliverable due to the failure of a party to whom the support has been  
31 ordered to be paid to notify the clerk or support payment clearinghouse of a  
32 change in address, the clerk or support payment clearinghouse shall return  
33 that and all other unassigned payments to the obligor unless there is an  
34 agreement of the obligor to pay assigned arrears and other debts owed to the  
35 state.

36 ~~L.~~ N. If the obligee of a child support order marries the obligor of  
37 the child support order, that order automatically terminates on the last day  
38 of the month in which the marriage takes place and arrearages do not accrue  
39 after that date. However, the obligee or the state may collect child support  
40 arrearages that accrued before that date. The obligee, the obligor or the  
41 department or its agent in a title IV-D case may file a request or  
42 stipulation to terminate or adjust any existing order of assignment, pursuant  
43 to section 25-504 or section 25-505.01.

44 ~~M.~~ O. For the purposes of ~~subsections H and I of this section~~  
45 CHAPTER, a child is emancipated:

- 1           1. On the date of the child's marriage.
- 2           2. On the child's eighteenth birthday.
- 3           3. When the child is adopted.
- 4           4. When the child dies.
- 5           5. On the termination of the support obligation if support is extended
- 6 beyond the age of majority pursuant to section 25-501, subsection A or
- 7 section 25-320, subsections E and F.

8           Sec. 2. Section 25-809, Arizona Revised Statutes, is amended to read:  
9           25-809. Judgment

10          A. Except as provided in section 25-501, subsection F, if a respondent  
11 admits parentage or if the issue is decided in the affirmative in an action  
12 instituted during the child's minority, the court shall direct, subject to  
13 applicable equitable defenses and using a retroactive application of the  
14 current child support guidelines, the amount, if any, the parties shall pay  
15 for the past support of the child and the manner in which payment shall be  
16 made.

17          B. The court shall enter an order for support determined to be due for  
18 the period between the commencement of the proceeding and the date that  
19 current child support is ordered to begin. The court shall not order past  
20 support retroactive to more than three years before the commencement of the  
21 proceeding unless the court makes a written finding of good cause after  
22 considering all relevant circumstances, including:

23           1. The circumstances, conduct or motivation of the party who claims  
24 entitlement to past support in not seeking an earlier establishment of  
25 maternity or paternity.

26           2. The circumstances, conduct or motivation of the party from whom  
27 past support is sought in impeding the establishment of maternity or  
28 paternity.

29           3. The diligence with which service of process was attempted on the  
30 respondent.

31          C. The court shall also direct the amount either parent shall pay for  
32 the actual costs of the pregnancy, childbirth and any genetic testing and  
33 other related costs subject to production of billing statements or other  
34 documentation. This documentation is prima facie evidence of amounts  
35 incurred and is admissible in evidence without the need for foundation  
36 testimony or other proof of authenticity or accuracy.

37          D. In any proceeding under this article the court shall order either  
38 parent or both parents to pay any monies reasonable and necessary for the  
39 support of the minor unemancipated child until the child reaches the age of  
40 majority or is emancipated. In determining the amount of support for the  
41 child, the court shall apply the child support guidelines pursuant to section  
42 25-320, subsection D. If a child reaches the age of majority while the child  
43 is attending high school or a certified high school equivalency program,  
44 support shall continue to be provided while the child is actually attending  
45 high school or the equivalency program but only until the child reaches

1 nineteen years of age unless the court enters an order pursuant to subsection  
2 F of this section.

3 E. The court may modify an order of support pursuant to section  
4 25-503, ~~subsection D~~.

5 F. Even if a child is over the age of majority when a petition is  
6 filed or at the time of the final decree, the court may order support to  
7 continue past the age of majority if all of the following are true:

8 1. The court has considered the factors prescribed in subsection D of  
9 this section.

10 2. The child is severely mentally or physically disabled as  
11 demonstrated by the fact that the child is unable to live independently and  
12 be self-supporting.

13 3. The child's disability began before the child reached the age of  
14 majority.

15 G. After considering the financial resources of both parties and the  
16 reasonableness of the positions each party has taken throughout the  
17 proceedings, the court may order a party to pay a reasonable amount to the  
18 other party for the costs and expenses of maintaining or defending any  
19 proceeding under this article. The court may order the party to pay these  
20 amounts directly to the attorney. The attorney may enforce the order in the  
21 attorney's name with the same force and effect and in the same manner as if  
22 the order had been made on behalf of any party to the action. For the  
23 purposes of this subsection, "costs and expenses" includes attorney fees,  
24 deposition costs, appellate costs and other reasonable expenses the court  
25 determines were necessary.

26 H. The court has contempt powers to enforce its orders.

27 I. The parties may terminate an action brought under this article by  
28 agreement and compromise only if the court has approved the terms of the  
29 agreement and compromise.

30 Sec. 3. Division of child support enforcement; special audit

31 A. The auditor general shall conduct a special audit, as defined in  
32 section 41-1278, Arizona Revised Statutes, to assess the performance of the  
33 division of child support enforcement in the department of economic security.  
34 The audit shall examine the following in relation to child support payments:

35 1. The number of errors made by the division in relation to payments  
36 being misdirected to persons to whom an obligation of support is not owed.

37 2. The number of demand letters that are sent out in error or with  
38 erroneous information.

39 3. The accuracy of the system by which the division records the  
40 receipt and transfer of payments.

41 4. The accuracy of the system by which the division tracks changes  
42 relating to payees.

43 5. The adequacy of the equipment used by the division to communicate  
44 between agencies.

45 6. How quickly the division processes court orders.

- 1           7. How the division determines what methodology it uses to collect
- 2     payments.
- 3           8. The ease with which information is accessible to the public.
- 4           9. Any other function of the division necessary to complete an
- 5     accurate and timely audit.
- 6           B. On or before November 15, 2007, the auditor general shall submit
- 7     copies of the special audit to the governor, the president of the senate, the
- 8     speaker of the house of representatives, the secretary of state and the
- 9     director of the Arizona state library, archives and public records.

**APPROVED BY THE GOVERNOR APRIL 25, 2006.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2006.**